

SERVICE DATE - APRIL 3, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub No. 627X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN FLOYD COUNTY, KY

Decided: April 1, 2003

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an approximately 13.4-mile line of railroad between milepost CON 3.1 at Salisbury and milepost CON 16.5 near Clear Creek Junction, in Floyd County, KY. Notice of the exemption was served and published in the Federal Register on February 11, 2003 (68 FR 6984-85). The exemption became effective on March 13, 2003.¹

On March 13, 2003, the Floyd County Fiscal Court and Floyd County, KY (petitioners), late-filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act),² and for a public use condition under 49 U.S.C.

¹ By decision served on March 12, 2003, the exemption was made subject to CSXT's compliance with the following conditions: (1) providing the National Geodetic Survey with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy any of the geodetic station markers that may be affected by the abandonment so that plans can be made for their relocation; (2) contacting the Floyd County Floodplain Office prior to commencement of any salvage activities concerning possible impacts of abandonment in the 100-year flood plain and appropriate permit coverage; and (3) retaining its interest in and taking no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

² The February 11, 2003 notice of exemption provided that requests for trail use/rail banking had to be filed by February 21, 2003, and that requests for public use conditions had to be filed by March 3, 2003. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that petitioners' late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company–Abandonment Exemption–in Starke County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

10905,³ in order to negotiate with CSXT for acquisition of the right-of-way for use as a recreational trail.⁴ Petitioners request that CSXT be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment along the right-of-way, except for public use on reasonable terms, and that CSXT be barred from removing or destroying any trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment exemption. Petitioners state that they need the full 180-day period because they have not had an opportunity to assemble or to review title information, complete a trail plan, or commence negotiations with CSXT.

By letter filed on March 17, 2003, CSXT advised the Board that it is willing to negotiate with petitioners. Because petitioners' request complies with the requirements of 49 CFR 1152.29 and CSXT is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CSXT may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Petitioners have satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. Here, however, while both conditions will be imposed at this time, the public use condition will expire on

³ The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) on February 14, 2003, indicating that the right-of-way may be suitable for other public use following abandonment.

⁴ Petitioners submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against the right-of-way, as required under 49 CFR 1152.29, and acknowledged that the use of the right-of-way for trail purposes is subject to future reactivation for rail service.

September 9, 2003,⁵ while the trail use negotiating period will run 180 days from the service date of this decision (until September 30, 2003). If a trail use agreement is reached on a portion of the right-of-way, CSXT must keep the remaining portion of the right-of-way intact for the remainder of the period for public use negotiations. Also, a public use condition is not imposed for the benefit of any one purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with petitioners, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The late-filed request for a NITU under 16 U.S.C. 1247(d) and a public use condition under 49 U.S.C. 10905 is accepted.
3. The notice of exemption served and published in the Federal Register on February 11, 2003, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below.
4. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision, CSXT may discontinue service, and salvage track and related materials. CSXT shall otherwise keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts, and tunnels, for a period of 180 days from the effective date (until September 9, 2003), to enable any state or local government agency, or other interested person to negotiate the acquisition of the line for public use. If an interim trail use/rail banking agreement is executed before September 9, 2003, the public use condition will expire to the extent the trail use/rail banking agreement covers the same line.
5. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify

⁵ Under 49 U.S.C. 10905, the Board may prohibit the disposal of rail properties that are proposed for abandonment and are suitable for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

6. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

7. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by September 30, 2003, interim trail use may be implemented. If no agreement is reached by that time, CSXT may fully abandon the line.

9. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary